



## Exempt Action Final Regulation Agency Background Document

<b>Agency name</b>	Department of Medical Assistance Services
<b>Virginia Administrative Code (VAC) citation</b>	12VAC30, Chapter 50
<b>Regulation title</b>	Amount, Duration, and Scope of Medical and Remedial Care and Services
<b>Action title</b>	Non-Emergency Transportation as a Medical Expense
<b>Document preparation date</b>	Enter date this form is uploaded on the Town Hall

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006(A) of the of the Administrative Process Act (APA) ([townhall.state.va.us/dpbpages/dpb\\_apa.htm](http://townhall.state.va.us/dpbpages/dpb_apa.htm)), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act ([leg1.state.va.us/cgi-bin/legp504.exe?000+cod+2.2-4100](http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+2.2-4100)), the *Virginia Register Form, Style, and Procedure Manual* ([legis.state.va.us/codecomm/register/download/styl8\\_95.rtf](http://legis.state.va.us/codecomm/register/download/styl8_95.rtf)), and Executive Orders 21 (02) and 58 (99) ([governor.state.va.us/Press\\_Policy/Executive\\_Orders/EOHome.html](http://governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html))

### Summary

*In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.*

This regulatory action proposes to cover Medicaid transportation as a medical service, as permitted by federal regulations, instead of as an administrative expense. DMAS is submitting a 1915(b) waiver to the Centers for Medicare and Medicaid Services as part of this change. The approved waiver will allow DMAS to continue to utilize a transportation broker for meeting the non-emergency transportation needs of recipients. Non-emergency transportation includes but is not limited to, non-emergency air travel, non-emergency ground ambulance, wheelchair vans, common user bus (intra-city and inter-city), volunteer drivers, and taxicabs. This change will permit DMAS more effective financial management of non-emergency transportation.

**Statement of agency final action**

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

I hereby approve the foregoing Agency Background Document with the attached amended State Plan pages: Narrative for the Amount, Duration and Scope of Services and Methods of Providing Transportation. The regulations affected by this action are Any Other Medical Care and Any Other Type of Remedial Care Recognized Under State Law, Specified by the Secretary of Health and Human Services (Supplement 1 to Attachment-3.1 A & B) (12VAC30-50-300) and Methods of Providing Transportation (Attachment 3.1-D) (12VAC30-50-530) and adopt the action stated therein. I certify that this final regulatory action has completed all the requirements of the Code of Virginia § 2.2-4012, of the Administrative Process Act.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Patrick W. Finnerty, Director  
Dept. of Medical Assistance Services

**Substance**

*Please detail any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate.*

The sections of the State Plan affected by this action are Narrative for the Amount, Duration and Scope of Services: The regulations affected by this action are Any Other Medical Care and Any Other Type of Remedial Care Recognized Under State Law, Specified by the Secretary of Health and Human Services: Transportation Services (Supplement 1 to Attachment-3.1 A & B) (12VAC30-50-300) and Methods of Providing Transportation (Attachment 3.1-D) (12VAC30-50-530).

Medicaid programs are federally required to cover transportation, by one of two methods, or a combination of the two, to ensure that Medicaid recipients have access to covered medical services. Federal regulations, at both 42 CFR §§ 431.53 and 440.170(a), permit this coverage in either of two ways, at the state's discretion: § 431.53

permits transportation coverage as an administrative expense; § 440.170(a) permits transportation coverage as a medical expense. Besides the differences in federal financial participation for this service for some states (the medical expense is federally reimbursed higher), the most significant difference in these two alternatives is the amount of service coordination and management that is permitted by 42 CFR § 431.53.

DMAS currently covers transportation as an “administrative service” which means that transportation is covered as a contractual service. Under this arrangement, Medicaid recipients contact the contractor (broker), which arranges for transportation to DMAS covered medical services.

This regulatory action will allow DMAS to cover transportation as a “medical expense” under federal regulations. This approach will allow for the coverage of non-emergency transportation as a medical service comparable to other medical services DMAS covers such as physician and hospital care. The use of a transportation waiver is critical to this change because it removes recipient freedom-of-choice of transportation provider, retaining the service coordination and management by the broker. Prior to July 2001, DMAS covered non-emergency transportation as a medical service without a waiver which resulted in considerable fraud and abuse of transportation services. The broker role is important to confirming Medicaid eligibility of the recipients, that the requested trip is to a covered DMAS service, and that the billing for transportation is for an approved trip and mileage. The broker is also effective in coordinating or combining trip requests from several recipients to a common destination such as a doctor’s office.

This regulatory action is essential to protect the safety and welfare of Medicaid recipients because it will ensure that Medicaid recipients will have access to medical services as required under federal law.. The broker has requirements as to driver and vehicle qualifications to promote safe transportation. This regulatory action is also important for the economical performance of an important governmental function because brokerage allows for cost-effective transportation by screening trip requests and coordinating trips. This regulatory change allows DMAS to more effectively financially manage transportation services as a medical service rather than an administrative service.

The changes as a result of this regulatory package will not affect transportation providers, Medicaid recipients, and Family Access to Medical Insurance Security Plan (FAMIS) program children. Only those persons not in managed care organizations (MCOs) are eligible for transportation under the action described here. Approximately 33,000 Medicaid and FAMIS enrollees are eligible for the non-emergency transportation coverage a month.

There are no localities, which are uniquely affected by these regulations as they apply statewide.

This action does not affect recipients who are enrolled in managed care organizations which either directly provide or arrange for recipient transportation. DMAS’

reimbursement for the provision of this service is contained within the capitation fee that is paid for each recipient. DMAS does not make separate payments for transportation services for MCO-enrolled recipients.

The Department of Medical Assistance Services is established under the authority of Title XIX of the federal Social Security Act, Public Law 89-97, as amended; and Title 32.1, Chapter 10, of the Code of Virginia. This regulatory action is a response to a change in the 2005 Virginia Appropriations Act (Item 326 QQ) that required DMAS to make this change. The agency had no discretion in how to implement this change. The Virginia Medicaid Program is funded with both federal and state funds. The current federal funding participation (FFP) for medical assistance expenditures is 50.0% on October 1, 2005.

This program is not expected to affect local departments of social services' eligibility determination process. Community Services Boards and local Area Agencies on Aging are not expected to be financially affected by this change. The number of Medicaid trips is not expected to change due to this action.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
12VAC30-50-300		Nonemergency transport services are covered as an administrative expense.	Nonemergency transport services are covered as a. medical services.
12VAC30-50-530		Nonemergency transportation, including but not limited to, nonemergency air travel, nonemergency ground ambulance, stretcher vans, wheelchair vans, common user bus (intra-city and inter-city), volunteer drivers, and taxicabs, is covered as an administrative expense.	Nonemergency transportation, including but not limited to, nonemergency air travel, nonemergency ground ambulance, stretcher vans, wheelchair vans, common user bus (intra-city and inter-city), volunteer drivers, and taxicabs, is covered as a medical service.

**Family impact**

*Assess the impact of this regulatory action on the institution of the family and family stability.*

This regulatory action will not have any negative affects on the institution of the family or family stability. It will not increase or decrease disposable family income or erode the marital commitment. It will not discourage economic self-sufficiency, self-pride, or the assumption of family responsibilities. The action will continue to allow recipient access to covered services.